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No. 99-1051

In The

Supreme Court of the United States

SANDRA LEA BENEDICT,

Petitioner,

v.

EAU CLAIRE PUBLIC SCHOOLS, WEAC LABOR UNION, THOMAS GUELZOW, GEORGE SENTENEY, VICTOR ARELLANO, THOMAS ARNOT, and JOHN FINERTY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENTS WISCONSIN EDUCATION ASSOCIATION COUNCIL and JOHN FINERTY IN OPPOSITION TO THE PETITION

JOHN D. FINERTY, JR.
(*Counsel of Record*)

PALMER & FINERTY, S.C.
20800 Swenson Drive, Suite 425
Waukesha, WI 53186-4081
(262) 798-1111

Attorney for the Respondents Wisconsin Education Association Council and John D. Finerty, Jr.

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QUESTIONS PRESENTED BY RESPONDENTS

Respondents, Wisconsin Education Association Council ("WEAC") and John Finerty, object to the "Questions Presented for Review" in the Petition for a Writ of Certiorari (the "Petition") and submit that the questions should be posed as follows:

1. Did the district court below properly dismiss WEAC from this federal discrimination case because Benedict failed to name WEAC as a respondent in an EEOC charge or did it abuse its discretion in declining to exercise supplemental jurisdiction over Benedict's state law claims against WEAC?

2. Did the district court properly dismiss Finerty for the failure to state a claim for relief because the Complaint alleged no acts or omissions by Finerty?

PARTIES

The parties to this case appear in the caption of the Petition, however, Benedict misnamed at least two Respondents.

The "WEAC LABOR UNION" referred to in the Petition is the Wisconsin Education Association Council, a voluntary association that provides organizational services to labor organizations representing public school teachers in the State of Wisconsin.

Respondent, "JOHN FINNNERTY [sic]" is John D. Finerty, Jr., the undersigned, counsel of record to WEAC.

OPINIONS BELOW

The August 23, 1999 Order of the United States Court of Appeals for the Seventh Circuit is reproduced in the appendix to the Petition at pages App. 1 through App. 4. The Memorandum and Order of the district court that dismissed Benedict's claims against WEAC, dated September 9, 1998, and the Order dated August 7, 1998 that dismissed Finerty from the case, were not included in the Appendix to the Petition. Both Orders are reproduced in the attached Appendix and labeled "App. 1A" through "App. 8A."

JURISDICTION

The Petitioner's Jurisdictional is not correct in that it cites 28 U.S.C. § 1291 as the basis for jurisdiction before this court. This court has jurisdiction pursuant to 28 U.S.C. § 1254; the Order from which Petitioner appeals was issued (i.e., decided) August 23, 1999; the Petition was filed with this Court on December 20, 1999.

STATEMENT OF FACTS

Benedict's Petition does not dispute the factual findings of the district court or the Court of Appeals. Therefore, the following statement of facts is taken from the orders of the courts below.

On May 1, 1998 Benedict filed this case against Eau Claire Public Schools claiming that she was discriminated

against on the basis of her age and disability and retaliated against for filing discrimination complaints. App. 1A. She also claims the WEAC labor union breached its duty of fair representation to her. App. 1A. In the case, Benedict also named as defendants WEAC's counsel, John Finerty; two lawyers who represented her at points during her 1995 discrimination suit, Victor Arellano and Tom Arnot, *see Benedict v. Eau Claire Public Schools*, No. 95-C-568-S (W.D. Wis. Mar. 19, 1996), *aff'd.*, No. 97-2513, 1998 WL 60374 (7th Cir. Feb. 10, 1998) (unpublished order), *cert. denied*, 119 S. Ct. 58 (1998); and two lawyers who represented her during successful litigation arising out of a 1986 auto accident, Thomas Guelzow and George Senteney. App. 2.

Benedict is a former teacher with the Eau Claire Public Schools, which is a Wisconsin Public School District. App. 2A. She is also a member of the local teachers' union known as the Eau Claire Association of Educators; the local union is affiliated with WEAC. App. 2A.

On February 20, 1998, Benedict filed a Complaint with the U. S. Equal Employment Opportunity Commission claiming that she was discriminated against on the basis of disability, age and in retaliation for filing discrimination complaints when she did not receive an engraved wooden plaque from the School District commemorating her 25 years of service as a teacher. Benedict received the plaque about eight months later rather than on the anniversary date of her hiring. App. 3A. The EEOC issued a Notice of Right to Sue letter on February 27, 1998. App. 3A. The EEOC charge and the Notice, however, did not name WEAC as a Respondent. App. 4A.

Benedict filed her federal court case about two months later alleging WEAC discriminated against her and breached its duty of fair representation. App 1A. There were no allegations in the Complaint of any actions by Finerty or the other attorneys. App. 7A. Benedict's subsequent filings only referred to Finerty as an attorney but she alleged no acts or omissions that would support a claim upon which relief could be granted. App. 7A. The district court granted Finerty's motion to dismiss. App. 7A. The court also granted summary judgment to WEAC and dismissed Benedict's federal claims with prejudice for failure to name WEAC in an EEOC charge; Benedict's state law claims were dismissed without prejudice. App. 5A.

REASONS WHY THE PETITION SHOULD BE DENIED

I The Courts below appropriately dismissed Benedict's claims against WEAC under well settled jurisdictional standards

There are no important questions of federal law in this case, nor is there a split among the Circuit Courts of Appeal on the applicable rule of law, that could provide a basis for granting the Petition for a Writ of Certiorari. This district court dismissed Benedict's federal discrimination claims, and the Court of Appeals affirmed, because Benedict did not name WEAC in a charge of discrimination with the U.S. Equal Employment Opportunity Commission, as required by 42 U.S.C. § 2000e-5(f)(1). The charge filing requirement is a prerequisite to a federal case, and Benedict makes no argument

that she should be excused from compliance with that requirement.

Benedict's state-law based claims against WEAC were dismissed without prejudice because the district court, again affirmed by the Court of Appeals, declined to exercise supplemental jurisdiction. The district court had broad discretion to make that choice and Benedict has identified no abuse of discretion that compels, or even warrants, granting the Petition. Accordingly, WEAC request the Petition be denied.

II Benedict failed to state a claim against Respondent Finerty.

The complaint in this case did not state a single fact concerning Finerty; there was no allegation of any act or omission that could state a claim of any nature. Benedict, therefore, failed to meet even the minimum notice requirement for Rule 8(a) of the Federal Rules of Civil Procedure. That is hardly a controversial rule and its application here does not deserve this Court's attention.

It was not until her reply brief before the Court of Appeals – a remarkable six months after filing the Complaint, that Benedict explained why she named Finerty in the first place. Even then the reason hardly made sense: she claimed, *inter alia*, a conspiracy among the lawyers on the case to deprive her of her federal and state rights. The Court of Appeals called Benedict's appeal "patently

frivolous." App. 3. This appeal is likewise frivolous, so there is no reason for this Court to grant discretionary review.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN D. FINERTY, JR.
Counsel of Record
PALMER & FINERTY, S.C.

Attorneys for Respondents

20800 Swenson Drive, Suite 425
Waukesha, WI 53186-4081
Telephone: (262) 798-1111
Facsimile: (262) 798-1294

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SANDRA LEA BENEDICT,

Plaintiff,

v.

EAU CLAIRE PUBLIC SCHOOLS and WEAC,

Defendant.

MEMORANDUM and ORDER

98-C-313-S

On May 1, 1998 plaintiff Sandra Lea Benedict commenced this civil action against defendant Eau Claire Public Schools claiming that she was discriminated against on the basis of her age and disability and retaliated against for filing discrimination complaints. She also claims defendant WEAC Labor Union breached its duty of fair representation to her. On August 7, 1998 the motions to dismiss of defendants Victor Arrellano, Thomas Arnot, Thomas Guelzow, George Senteney and John Finnerty were granted.

On August 17, 1998 defendant WEAC moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Defendant Eau Claire Public Schools filed a motion for summary judgment on August 21, 1996. Both motions have been fully briefed and are ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motions for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Sandra Lea Benedict is an adult resident of Wisconsin. Defendant Eau Claire Public Schools is a Wisconsin Public School District. Defendant Wisconsin Education Association Council (WEAC) is a state-wide

voluntary association of labor organizations that provides organizational and associational services to its members in Wisconsin.

Plaintiff was employed by defendant Eau Claire Public Schools from 1972 or 1973 through 1997 as a remedial studies teacher. She as a member of the local teachers' union known as the Eau Claire Association of Educators (the Association). Her employment was subject to the terms and conditions of a collective bargaining agreement between the Association and the School District.

On March 19, 1996 the Court found in Case No. 95-C-568-S, *Benedict v. Eau Claire Public Schools et al.*, that Eau Claire Public Schools did not discriminate against plaintiff based on disability, her age or in retaliation for filing discrimination complaints. Plaintiff last worked for the Eau Claire Public Schools as a teacher on March 21, 1997.

In May 1997 while plaintiff was on a disability leave of absence the Eau Claire Public Schools issued an engraved wooden plaque commemorating plaintiff's 25 years of service as a teacher. Normally plaintiff would have received the plaque at a staff meeting in May 1997 but she did not because she was on leave. The plaque was not based upon merit or work performance. Plaintiff received her plaque by mail in January 1988.

On or about February 20, 1998 plaintiff filed a complaint with the EEOC claiming that she was discriminated against on the basis of disability, age and in retaliation for filing discrimination complaints when she did not receive her plaque in a timely manner. She was issued a Notice of Right to sue letter on February 27, 1998.

Michael Burke is an attorney employed as the Executive Director of the Northwest United Educators (NUE) which is a labor organization representing public school teachers in northwestern Wisconsin. NUE works in conjunction with the Association in handling grievances brought by teachers within the School District.

On March 30, 1998 plaintiff called Burke and requested that he represent her at an administrative discrimination hearing before the Equal Rights Division (ERD) of the Wisconsin Department of Workforce Development. Burke denied plaintiff's request because plaintiff's ERD complaint did not arise under terms of the Collective Bargaining Agreement.

MEMORANDUM

Plaintiff is precluded from relitigating claims she pursued in Case No. 95-C-568-S. The only new claim plaintiff pursues against defendant Eau Claire Public Schools is her discrimination claim concerning the delay in receiving her 25 years of service plaque. It is undisputed that defendant's delaying sending plaintiff her plaque was not an adverse employment action. Since plaintiff did not suffer an adverse employment action, she can not prevail on her claims that she was discriminated against on the basis of her age, her disability or in retaliation for filing discrimination complaints. Defendant Eau Claire Public Schools is entitled to judgment in its favor as a matter of law. Accordingly, its motion for summary judgment will be granted.

Plaintiff claims that defendant WEAC discriminated against her because of her disability and age and

breached its duty of fair representation to her. The federal discrimination charges against WEAC must be dismissed for lack of jurisdiction because WEAC was not named as a respondent in her EEOC charge. *Eggleston v. Chicago Journeymen Plumbers Local Union*, 657 F. 2d 890, 905 (7th Cir. 1981).

Plaintiff also pursues a state law claim of breach of the duty of fair representation. This Court declines to exercise continuing supplemental jurisdiction over this State law claim pursuant to 28 U.S.C. § 1367(c)(3) and *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1986). *See Brazinski v. Amoco Petroleum Additives Co.*, 6 F. 3d 1176, 1182 (7th Cir. 1993).

ORDER

IT IS ORDERED that the motion of defendant Eau Claire Public Schools for summary judgment is GRANTED.

IT IS FURTHER ORDERED that the motion of defendant WEAC for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants Eau Claire Public Schools, WEAC, Victor Arrellano, Thomas Arnot, Thomas Guelzow, George Senteney and John Finnerty against plaintiff DISMISSING her complaint and all claims contained therein with prejudice and costs except that their state law claims against WEAC are DISMISSED without prejudice.

Entered this 9th day of September, 1998.

BY THE COURT:

/s/ John C. Shabaz
JOHN C. SHABAZ
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SANDRA LEA BENEDICT,

Plaintiff,

v.

EAU CLAIRE PUBLIC SCHOOLS,

Defendant.

ORDER

98-C-313-S

On May 1, 1998 plaintiff Sandra Benedict commenced a civil action against Eau Claire Public Schools. WEAC Labor Union is named as a defendant in the body of the complaint. Plaintiff served John Finnerty, Thomas Arnot, Victor Arrellano, Thomas Guelzow and George Senteney as well as Eau Claire Public Schools and WEAC with copies of the complaint and summons.

On July 1, 1998 Victor Arrellano and Thomas Arnot moved to dismiss plaintiff's complaint and for sanctions. On July 9, 1998 defendant John Finnerty moved to dismiss plaintiff's complaint and to quash summons. Defendants Thomas Guelzow and Senteney moved to dismiss plaintiff's complaint on July 10, 1998. These motions have been fully briefed and are ready for decision. On July 31, 1998 defendant Finnerty moved for sanctions.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. *Conley v.*

Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Car Carriers, Inc. v. Ford Motor Co.*, 745 F. 2d 1101, 1106 (7th Cir. 1984).

In the complaint filed in this Court plaintiff fails to allege any actions by John Finnerty, Victor Arrellano, Thomas Arnot, Thomas Guelzow or George Senteney. In her briefs she refers to them as attorneys but has not alleged facts that would support a claim upon which relief could be granted. The motions of these defendants to dismiss plaintiff's complaint will be granted.

Defendants Victor Arrellano and Thomas Arnot moved for sanctions on July 1, 1998. It does not appear they provided plaintiff notice as required by Rule 11(c)(1)(A), Federal Rules of Civil Procedures. Accordingly, their motion for sanctions will be denied.

On June 25, 1998 defendant John Finnerty provided plaintiff the requisite notice for his Rule 11 motion for sanctions which he filed in this Court on July 31, 1998. Plaintiff has until August 20, 1998 to respond.

Plaintiff's claims against defendants Eau Claire Public Schools and WEAC remain for which motions have not been filed. *Benedict v. Eau Claire Public Schools*, 98-C-313-S

ORDER

IT IS ORDERED that the motions of defendants Victor Arrellano, Thomas Arnot, Thomas Guelzow, George

Senteney and John Finnerty to dismiss plaintiff's complaint are GRANTED.

IT IS FURTHER ORDERED that the motion for Rule 11 sanctions of defendants Arrellano and Arnot is DENIED.

Entered this 7th day of August, 1998.

BY THE COURT:

/s/ John C. Shabaz
JOHN C. SHABAZ
District Judge